

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

AUG 17 2004

In the Matter of

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 04-____
FM Broadcast Stations) RM - ____
(Islamorada, Marathon, and)
Sugarloaf Key, Florida))

To: The Commission

PETITION FOR RULE MAKING

LSM Radio Partners LLC ("LSM Radio"), licensee of WWWK(FM), Marathon, Florida, pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules and by its counsel, hereby submits this Petition for Rule Making ("Petition").¹ LSM Radio respectfully requests that the Commission initiate a rule making proceeding to make the following changes to Section 73.202(b) of the Commission's Rules: (1) allocate Channel 289A to Sugarloaf Key, Florida as that community's first local service; and (2) reallocate Channel 288C2 from Marathon to Islamorada, Florida, and modify the community of license of station WWWK(FM) to operate on Channel 288C2 at Islamorada. As shown below, the proposed changes serve the public interest by providing Sugarloaf Key with a first local service and Islamorada with its second local service and the community's first local operating station,² and will not result in the removal of the only local broadcast service from Marathon. Hence, the reallocation constitutes a preferential arrangement and improved service to the public. In support thereof, the following is hereby shown:

¹ Section 1.420(i) provides that "(i) In the course of the rulemaking proceeding to amend §73.202(b) ... the Commission may modify the license ... of an FM ... broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."

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I. Technical Compliance

A. Sugarloaf Key, Florida

The Petition proposes the allotment of Channel 289A to Sugarloaf Key, Florida as that community's first local service.³ The community of Sugarloaf Key is not located within the defined boundaries of any urbanized area and the proposed 70 dBu for the new allotment will not cover more than 50% of any urbanized area.⁴ As detailed in the attached Engineering Statement, the proposed allotment comports with the Commission's minimum-distance separation requirements as stated in Section 73.207(b) of the Commission's Rules, provided that Channel 288C2 is reallocated from Marathon to Islamorada.

B. Islamorada, Florida

The Petition also proposes to reallocate Channel 288C2 from Marathon to Islamorada, Florida and modify the community of license of station WWWK(FM) to operate on channel 288C2 at Islamorada. These changes will require modification of the current WWWK(FM) authorization to change the community of license for the station from Marathon to Islamorada with a relocation of the transmitter site to new reference coordinates.⁵ The community of Islamorada is not located within the defined boundaries of any urbanized area and the proposed 70 dBu contour for WWWK(FM) will not cover more than 50% of any urbanized area. As such, this proposal is not considered relocation from a rural market to an urbanized area.

Petitioners seeking to change community of license pursuant to Section 1.420(i) must

² The Commission has pending a rule making proceeding to allocate Channel 283C2 to Islamorada as that community's first local service. *See Islamorada, Florida, Notice of Proposed RuleMaking*, MB Docket No. 04-205 (Aud. Div.) (rel. May 28, 2004).

³ The reference coordinates are 24-37-30 N and 81-32-30 W. *See Engineering Statement of Robert M. Smith*, attached as Exhibit 1 ("Engineering Statement")

⁴ *See Engineering Statement.*

⁵ The reference coordinates are 25-01-23 N and 80-30-06 W. *See Engineering Statement.*

propose a channel that is mutually exclusive with the existing station's channel, and the new community must be preferred over the existing community pursuant to the Commission's FM allotment priorities.⁶ The proposed allotment comports with the Commission's minimum-distance separation requirements as stated in Section 73.207(b) of the Commission's rules. The proposed allotment of Channel 288C2 to Islamorada is mutually exclusive with the existing allotment of that channel at Marathon, and the Islamorada allotment would provide the requisite principal-community coverage to the entire community of Islamorada.⁷

WWWK(FM) currently operates as one of four commercial broadcast stations licensed to Marathon, Florida.⁸ Because Marathon will continue to be served by three commercial radio stations, the proposed relocation of WWWK(FM) would not result in the removal of Marathon's sole local transmission service. Furthermore, the Engineering Statement shows that the service areas associated with Marathon will retain aural service; thus, the transmitter relocation associated with the allotments proposed herein will create no underserved land areas.⁹

In addition, as described below, Islamorada is a preferred community to Marathon because it will result in a second local service and first local operating station for Islamorada and the gain area and loss areas are both considered well-served.¹⁰ In addition, the proposed change in community of license to Islamorada makes possible the provision of a first local service to Sugarloaf Key.

⁶ See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("FM Priorities").

⁷ See Engineering Statement.

⁸ Data from the FCC Audio Division's website indicates that WFFG(AM), WGMX(FM) and WAVK(FM) would continue to serve Marathon.

⁹ See Engineering Statement.

II. The Proposed Changes Serve the Public Interest

The Petition proposes changes to Section 73.202(b) of the Commission's Rules to the communities of Islamorada, Marathon and Sugarloaf Key, Florida that represent a preferential arrangement under the *FM Priorities* and therefore serve the public interest. The proposed change in community of license for WWWK(FM) from Marathon to Islamorada combined with the allocation of Channel 289A to Sugarloaf Key serves the public interest by creating a new first local service to the community of Sugarloaf Key and a second local service to Islamorada. In accordance with the *FM Priorities*,¹¹ the proposed allocations represent an enhanced allotment priority over retention of Channel 288C2 in Marathon because the allocations will result in the introduction of a new first local service and a second local service. First local service constitutes a priority (3) under the *FM Priorities*, while retention of the existing station at Marathon represents at best a priority (4) in light of the other radio stations licensed to that community.¹²

The proposed reallocation of Channel 288C2 from Marathon to Islamorada represents a second local service to that community. A second local service to Islamorada is preferential to retention of a fourth local service in Marathon, even when considered under priority four of the *FM Priorities*. The public interest factors in favor of relocating Channel 288C2 from Marathon to Islamorada include the following: (1) Islamorada has fewer local services than Marathon; (2) Islamorada receives fewer aural services than Marathon; (3) the proposed allocation in Islamorada will result in service to a larger area and population than retention of the allocation in Marathon; (4) the reallocation will not result in the creation of any underserved land areas; (5) the reallocation will not result in relocation to an urbanized area; and (6) the reallocation will

¹⁰ See Engineering Statement.

¹¹ See *Revision of FM Assignment Policies and Procedures*, 99 FCC 2d 88 (1988).

¹² The FM allotment priorities are (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). *Id.*

provide the first operating service to Islamorada. Accordingly, even if the proposal to change the community of license of Channel 288C2 from Marathon to Islamorada is considered on its own merits under priority four of the *FM Priorities*, the proposal would serve the public interest. When the proposed change results in the provision of a new first local service to Sugarloaf Key as well, the public interest benefits are readily apparent.

II. Community of License

A. Sugarloaf Key, Florida

LSM Radio requests allocation of Channel 289A as a first local service to that community. Sugarloaf Key possesses characteristics demonstrative of a community. The Sugarloaf Key community has a population of 1,528 persons.¹³ The origin of the community's name came from its resemblance to a loaf of sugar and sugarloaf pineapples, which were abundantly grown in the area in the late nineteenth and twentieth centuries. In the late 1800's to the early 1900's, the town thrived on a sponge and pineapple business called the Florida Keys Sponge & Fruit Company. In 1927, Richter Perkey, a real estate developer, attempted to develop Sugarloaf Key into a resort. In order to deal with the mosquito problem, Perkey built a tower to attract bats to control the mosquito population. Today, the tower is a town landmark called Perky Bat Tower.

Sugarloaf Key has its own zip code and until recently its own branch of the U.S. Postal Service, both of which are indicative of an established community.¹⁴ Sugarloaf Key has its own public school, "Sugarloaf Elementary/Middle School," which enrolls students from neighboring

¹³ See Engineering Statement.

¹⁴ See Exhibit 2.

towns,¹⁵ a volunteer fire department and an airport.¹⁶ The Sugarloaf Baptist church is located in Sugarloaf Key.¹⁷ Numerous restaurants and companies are located in Sugarloaf Key, including Bay Point Gourmet Pizza, Mangrove Mama's, Old Tyme Keys Atmosphere, Crystal Seas Kayaking, Fantasy Dan's Airplane Rides, and Tommy's Tire & Auto Services. Sugarloaf Key also has its own bank branch called First State Bank of the Florida Keys.

Sugarloaf Key has several restaurants and businesses that identify themselves as being part of the community of Sugarloaf Key, including the Sugarloaf Lodge Restaurant, Sugarloaf Sports & Leisure Club, Sugarloaf Resort-KOA and Sugarloaf Marina.

Based on the foregoing facts, Sugarloaf Key qualifies as a community for reallocation of Channel 288 from Marathon, Florida, to Sugarloaf Key, Florida, as that community's first local service.

B. Islamorada, Florida

Islamorada possesses characteristics demonstrative of a community.¹⁸ The Islamorada community has a population of 6,846 persons.¹⁹ The origin of the community's name came from the Spanish explorers, which translates as "Island Home" or "Purple Isles". Spanish sea charts of the 1500s show that the freshwater wells located at Islamorada were used by Native Americans, explorers and seafarers. By the 1820s and 1830s, a small community flourished. The first general store was founded in 1824. The wrecking industry (the salvaging of wrecked ships) was the main business in Islamorada from the late 1700s to 1870s. In exchange for their

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Both Islamorada Broadcasters and Paul B. Christensen, Esq. filed comments in MB Docket 04-205 stating why Islamorada, Florida qualifies as a community. Their comments are incorporated by reference as further evidence of characteristics demonstrating why Islamorada is a community.

¹⁹ See Exhibit 3.

services, wreckers received a percentage of the salvaged cargo. In 1733, a Spanish fleet sunk off the coast of Islamorada. Today the site is an underwater archaeological park. The Islamorada Hurricane Monument is a reminder of the Labor Day Hurricane of 1935, when the storm and huge tidal waves swept over Islamorada, killing more than 423 persons.

Islamorada has its own zip code (33036) and postal office, both of which are indicative of an established community. Islamorada has its own high school, Island Christian High School,²⁰ and a chamber of commerce.²¹ Islamorada has more than 20 restaurants,²² 30 places for lodging,²³ 23 art galleries,²⁴ numerous churches²⁵ and several banks²⁶. Today Islamorada is known as the "Sportsfishing Capital of the World". Visitors to Islamorada can enjoy snorkeling and diving, sailing, and fishing at Fanta Sea Charters, Island Adventures, Ocean Quest Dive Center, Reel n' Reef Charters, and Sea-N-Swim Tours.

Islamorada has several restaurants and businesses that identify themselves as being part of the community of Islamorada, including Islamorada Fish Company, Islamorada Fishing Club, Islamorada Restaurant and Bakery, Islamorada Boat Center, Islamorada Brick Company, Islamorada Dry Cleaners, Islamorada Pool Company, Islamorada Tennis Club, Islamorada Hotel, Islamorada Moose Lodge, First Baptist Church of Islamorada, Islamorada Seventh Day Adventist Church, and Islamorada Chiropractic.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* The restaurants include Bentley's, Caribbean Café and Catering, Cheeca Lodge and Spa, Copper Kettle Restaurant, Kaiyo, Keliann's Café, Mangrove Mike's, Oceanview Inn and Sports Pub, Smuggler's Cove and Ziggies Gumbo and Crab Shark.

²³ *Id.* Examples of lodging in Islamorada include Bed & Breakfast of Islamorada, Blue Finn Inn, Caloosa Cove Resort, Casa Morada, Hampton Inn & Suites, Harbor Lights Motel, Islamorada Motel, Islander Resort, Kon Tiki Resort and Ocean Pointe Suites.

²⁴ *Id.*

²⁵ *Id.* The churches include the First Baptist Church of Islamorada, Island Community Church, Matecumbe United Methodist Church, Islamorada Seventh Day Adventist Church, and St. James the Fisherman Episcopal Church.

²⁶ The banks include Community Bank of Florida, Key Bank, First National Bank of South Florida, and First State Bank of the Florida Keys.

Islamorada has several beaches (Anne, Islamorada Library, Holiday Isle Resort and Founder's Park) and state parks (Indian Key State Park, Long Key State Recreation Area, Lignumvitae Key State Park and Botanical Site and Windley Key Fossil Reef State Park) for recreational past times.²⁷ Islamorada has year around activities, including the Islamorada Fishing Club Shellfish Tournament in January, the Taste of Islamorada in April, Mardi Gras in May, Golden Fly Invitational Tarpon Tournament in June and the Holiday Isle Golf Classic in November.²⁸

Based on the foregoing facts, Islamorada qualifies as a community for reallocation of Channel 288C2 from Marathon, Florida, to Islamorada, Florida, as that community's second local service.

CONCLUSION

LSM Radio hereby states in the event that the Commission makes the proposed changes to the FM Table of Allotments for WWWK(FM), LSM Radio will timely file the necessary application for a construction permit for a new station and will construct the new facility in a timely manner. LSM Radio further states that when the FCC conducts a proceeding to award a construction permit for Channel 289A in Sugarloaf Key, Florida, LSM Radio will file the necessary forms and applications to participate in any auction, and if LSM Radio is successful in the auction, will timely file the necessary application for a construction permit for the new station and will construct the new facility in a timely manner.

²⁷ See Exhibit 4.

²⁸ *Id.*

The Petition proposes the following Changes to the FM Table of Allotments:

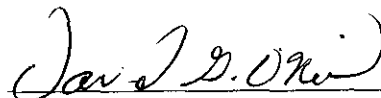
<u>Community</u>	<u>Current</u>	<u>Channel No.</u> <u>Proposed</u>
Marathon, Florida	232C2, 249A, 288C2	232C2, 249A
Islamorada, Florida	----	288C2, 283C2 ²⁹
Sugarloaf Key, Florida	----	289A

This proposal will serve the public interest by providing Sugarloaf Key with its own first local service and Islamorada with a second local service and local operating station. Marathon, Florida, which currently has local service, would still retain a local service. For these reasons, LSM Radio respectfully requests that the FCC initiate and approve this rule making proceeding to modify the FM Table of Allotments as proposed herein to provide improved service to the local communities involved, which will result in a greater benefit to the public.

WHEREFORE, FOR THE FOREGING REASONS, LSM Radio Partners LLC respectfully requests that the Commission issue a Notice of Proposed Rule Making in connection with the proposal outlined in this Petition for Rule Making and modify Section 73.202(b) accordingly.

Respectfully submitted,

LSM RADIO PARTNERS LLC



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August 17, 2004

Its Counsel

²⁹ Proposed in MB Docket 04-205.

EXHIBIT 1

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ENGINEERING STATEMENT

**IN SUPPORT OF
PETITION FOR RULE MAKING**

BY:

LSM RADIO PARTNERS, LLC

July 2004

PURPOSE AND SCOPE

The Petition, of which this Statement is a part, requests a modification of the FCC FM Table of Allotments in 47 CFR §73.202 by deleting the allotment of channel 288C2 at Marathon, FL ^{1/}, adding the allotment 288C2 at Islamorada, FL, and adding the allotment of 289A at Sugarloaf Key, FL.

The results of these changes are:

WWWK(FM)'s (FCC Facility ID 34355) community of license changes from Marathon, FL (on channel 288C2) to Islamorada, FL (on channel 288C2) as that community's first local service and a new first local service at Sugarloaf Key, FL is created on channel 289A.^{2/}

This Statement supports the Petition by showing that the new allotments comply with applicable spacing requirements, provide 70 dBu coverage to the principal communities of the new allotments, provide 60 dBu coverage to a larger population than does the present allotment scheme and is mutually exclusive with the present allotment of 288C2 to Marathon, FL.

ALLOTMENT SITES

CHANNEL 288C2 AT ISLAMORADA, FL

A computerized search of the FCC's CDBS FM database shows that an allotment site specified at N25-01-23, W80-30-06 is fully spaced per the requirements of 47 CFR §73.207(b)(1) to all domestic stations/allotments including the new allotment for 289A at Sugarloaf Key, FL.

CHANNEL 289A AT SUGARLOAF KEY, FL

A computerized search of the FCC's CDBS FM database shows that an allotment site specified at N24-37-30, W81-32-30 is fully spaced per the requirements of 47 CFR §73.207(b)(1) to all domestic stations/allotments including the new allotment for 288C2 at Islamorada.

^{1/} Marathon, FL will retain local service from WGMX(FM), WAVK(FM) and WFFG(AM).

^{2/} The Commission has before it a Petition for Rule Making to allot 283C2 to Islamorada, FL. That Petition is still pending.

PRINCIPAL COMMUNITY COVERAGE

Figure 1 is a portion of a 25% reduction of a USGS 1:100,000 scale Topographic Series map on which are plotted the political boundaries of Islamorada, FL and the 70 dBu contour of a full Class C2 facility (50 kW, 150 meters HAAT) at the proposed reference coordinates. The 70 dBu F(50,50) contour from the proposed allotment site encompasses all of Islamorada, FL. The point in Islamorada farthest from the allotment site is less than 30.9 kilometers from the site. A class C2 standard 70 dBu contour of 32.7 km also encompasses all of Islamorada.

Figure 2 is a portion of a 25% reduction of a USGS 1:100,000 scale Topographic Series map on which are plotted the political boundaries of Sugarloaf Key, FL and the 70 dBu contour of a full Class A facility (6 kW, 100 meters HAAT) at the proposed reference coordinates. The 70 dBu F(50,50) contour from the proposed allotment site encompasses all of Sugarloaf Key, FL. The point in Sugarloaf Key farthest from the allotment site is less than 10.0 kilometers from the site. A class A standard 70 dBu contour of 16.2 km also encompasses all of Sugarloaf Key.

PRESENT VERSUS PROPOSED SERVICE

The present WWWK(FM) facility's 60 dBu contour encompasses an area of 2,505 square kilometers and 11,968³ persons. The 60 dBu contour from the proposed operation of Channel 288C2 in Islamorada, FL covers 8,558 square kilometers and 79,598 persons.

The 60 dBu contour from the proposed operation of Channel 289A in Sugarloaf Key, FL covers 2,515 square kilometers and 45,454 persons.

A modification of the Table of Allotments, as proposed in this Petition will result in an increase of 113,084 persons (a 945% increase) receiving 60 dBu service from WWWK(FM) and the new 289A allotment in Sugarloaf Key, FL..

The operation of WWWK(FM) at Islamorada will provide the first local service to that community (see footnote 1).

The operation of 289A at Sugarloaf Key will provide the first local service to that community.

^{3/} All population figures in this Statement are from the 2000 U.S. Census.

ALLOTMENT IMPROVEMENT

The channel 289A allotment at Sugarloaf Key, FL is a new allotment, available for auction.

MUTUAL EXCLUSIVITY

The proposed allotment site for channel 288C2 at Islamorada, FL is 63 kilometers from the antenna site for WWWK(FM) 288C2, in Marathon, FL. 47 C.F.R. § 73.207 requires co-channel class C2 facilities to be separated by 190 kilometers. No combination of sites exists that allow simultaneous service to Marathon on channel 288C2 and Islamorada on channel 288C2.

The proposed allotment site for channel 289A at Sugarloaf Key, FL is 52.6 kilometers from the antenna site for WWWK(FM) 288C2, in Marathon, FL. 47 C.F.R. § 73.207 requires first adjacent class C2 and class A facilities to be separated by 106 kilometers. No combination of sites exists that allow simultaneous service to Marathon on channel 288C2 and Sugarloaf Key on channel 289A.

OTHER AURAL SERVICES

One loss areas is definable. That is the area within the present 60 dBu coverage of WWWK(FM) which is outside the proposed 60dBu coverage of WWWK(FM).

Figure 3 is a plot of the loss area and the protected service contours of various FM stations in the area near WWWK(FM). Three of the stations, WAVK(FM), WGMX(FM) and WKYZ(FM) provide 60 dBu or better coverage to the entire loss area. Four of the stations, WCNK(FM), WWUS(FM), WMFM(FM) and WEOW(FM) provide 60 dBu or better coverage to all land areas within the loss area. All land areas within the loss area will continue to receive a minimum of six FM services following the removal of WWWK(FM) from Marathon. In addition to the FM services listed, a minimum of three AM facilities serve most or all of the loss area. No land areas are underserved as a result of this proposal.

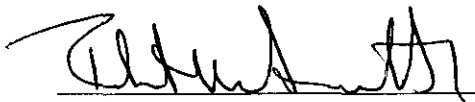
SUMMARY

The proposed changes to the Commission's Table of Allotments will result in the following improvements in the use of the spectrum:

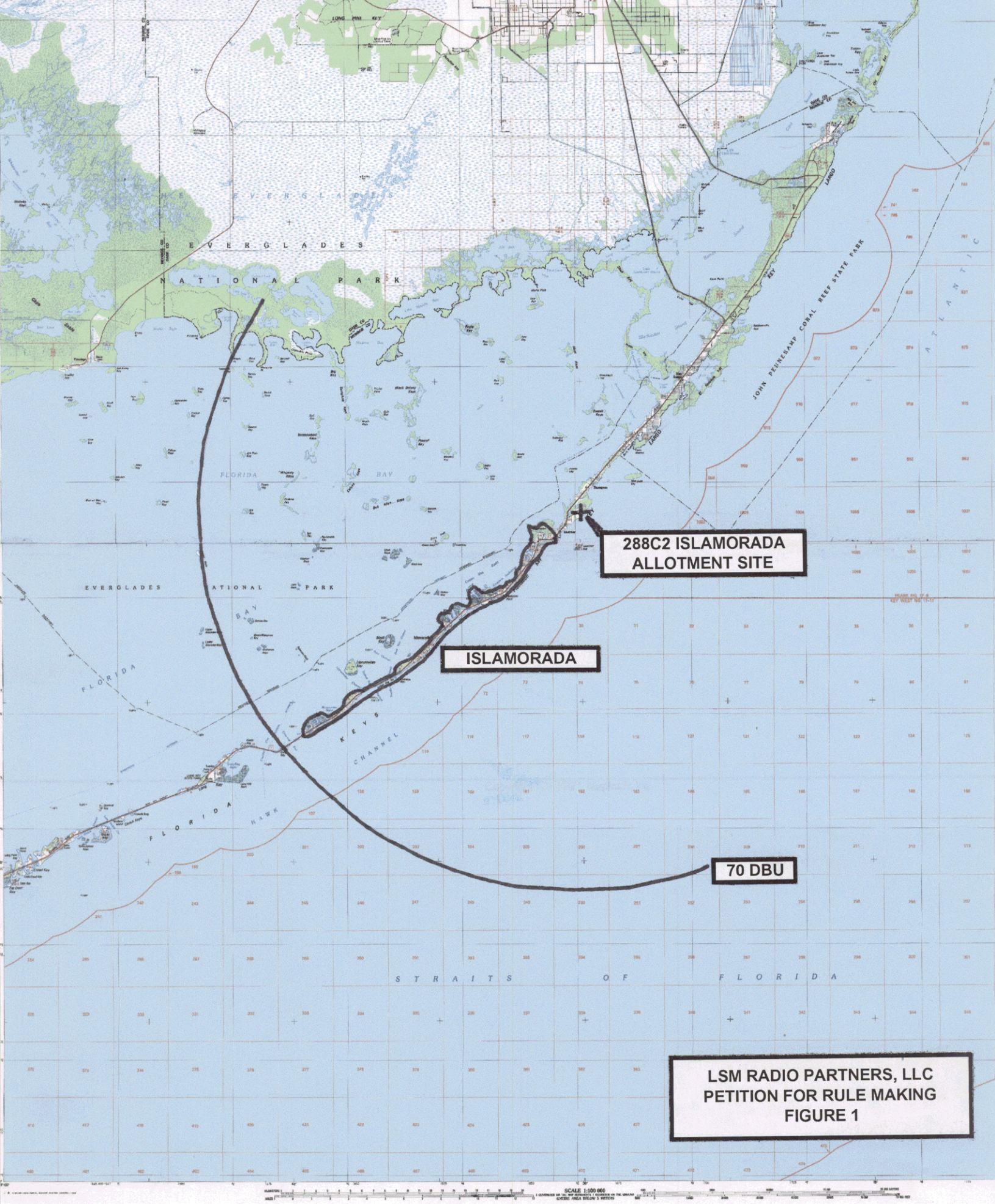
1. Sugarloaf Key, FL receives its first local service
2. Islamorada, FL receives its first local service
3. A total of 113,084 more people receive 60 dBu service than at present.

CERTIFICATION

I, Robert M. Smith Jr., of Port St. Lucie, FL, do hereby certify that all of the data, calculations and statements in this application are true and correct to the best of my knowledge and belief. I further certify that I am an experienced and qualified broadcast engineer and that my qualifications are a matter of record with the Commission.

A handwritten signature in black ink, appearing to read 'Robert M. Smith Jr.', written over a horizontal line.

Robert M. Smith Jr.

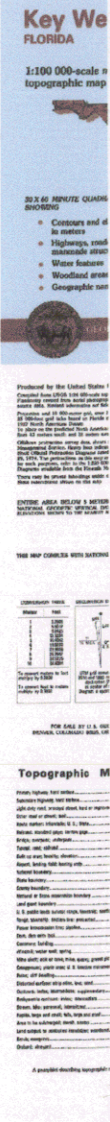


288C2 ISLAMORADA
ALLOTMENT SITE

ISLAMORADA

70 DBU

LSM RADIO PARTNERS, LLC
PETITION FOR RULE MAKING
FIGURE 1



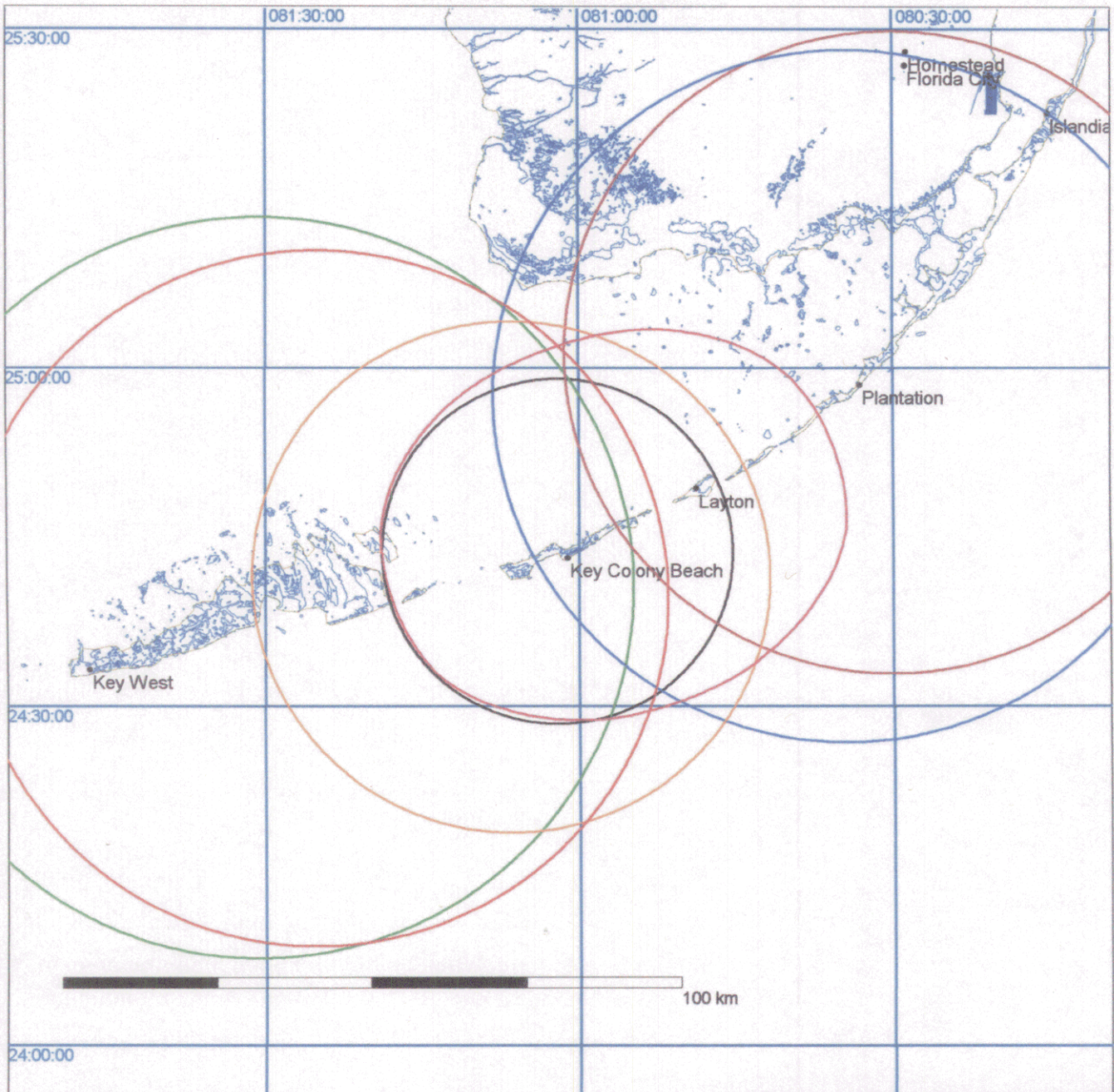
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R.M. SMITH ASSOCIATES

COVERAGE CONTOUR ANALYSIS

WWWK(FM) Licensed 60 dBu
WWWK(FM) Proposed 60 dBu
WAVK(FM) Licensed 60 dBu
WCTH(FM) Licensed 60 dBu
WKYZ(FM) Licensed 60 dBu

WGMX(FM) Licensed 60 dBu
WCNK(FM) licensed 60 dBu
WWUS(FM) Licensed 60 dBu
WMFM(FM) Licensed 60 dBu
WEOW(FM) Licensed 60 dBu



LSM RADIO PARTNERS, LLC
PETITION FOR RULE MAKING
FIGURE 3